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## Law Politics of North Borneo Province Act Establishment

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### Abstract

One of the reformation spirits applied by the Indonesian Republic is “Central government has the authority to hand over some of its power to the regions based on the autonomy rights (Negara Kesatuan with decentralisation system).

The autonomy rights are applied in the form of Regional Redistricting or new autonomy region. Legally, the redistricting requirements or the establishment of a region to be a new autonomy region like towns/cities or provinces are not that difficult. That is why the discourse about new Province Establishment in Inland Frontier Area is a discourse which must be done to shorten the control span and to give welfare to the regions, like the establishment of North Borneo Province which borders with Malaysia. However, there are still many problems seen from Juridical Review in Laws No. 20, 2012 about the Establishment of North Borneo Province because it is felt that it is not relevant with the reformation spirit, in which there is an obscurity in Article 19. Thus, a strong legal reasoning of Law Politics is needed to understand the Legality of North Borneo Province Establishment wisely.

**Keywords:** Regional Autonomy, Law Politics, Frontier and Inland Area

### 1. Introduction

In the reformation era, Law gives enough looseness to the regions to perform the new region redistricting or establishment. The Law basis of New Autonomy Region or Regional Redistricting is contained in Laws No. 32, 2004 about Regional Government Article 4:

- (1) Region establishment as meant in Article 2 verse (1) is defined by Act.
- (2) Region establishment act as meant in verse (1) includes name, area coverage, border, capital city, authority of organizing government affairs, regional head official appointment, DPRD affiliation filling, officialdom diversion (transfer of personnel), funding, equipments and documents, and regional equipments.
- (3) Region establishment might be a merger of some regions or parts of adjacent regions or redistricting from one region to two or more regions.
- (4) Redistricting from one region to two or more regions as meant in verse (3) can be done after reaching the minimum limit of government implementation age. (The Constitution 1945)

Based on the law basis, there has been many region redistrictings throughout Indonesia. Since the regional autonomy implementation from 1999 to 2009, Daerah Otonomi Baru (DOB) – New Autonomy Region – has got incredible addition up to 205 regions so that it increases the budget allocation which should have increased the society welfare. There are still many that have to be allocated for building government facilities (Pra-Peneliti dengan Yusuf SK : 2012), personnel expenditure, and New Region Redistricting needs. The increasing needs of special allocation fund provision and government spending allocation to fund vertical institutions strengthen the government’s reason to take the Region Redistricting Moratorium authority to be more critical and more careful in responding the new region redistricting because according to the government, the autonomy and region redistricting implementation is considered as an eighty-percent failure during the last ten years. Another reason behind the making of Region Redistricting Moratorium is because in 2008, the government concentrated to hold the 2009 national election. Matters about redistricting or proposing New Autonomy Region, which become the public aspiration in several regions which nominate the New Autonomy Region, will be continued after national election but it is just a rhetoric because the fact is that the government issues the Region Redistricting Moratorium after the national election by waiting for the revision of Laws No. 32, 2004 about Regional Government and by preparing the grand design of the New Autonomy Region Redistricting.

“Meanwhile, the reality is that the frontier areas need handling that must be prioritized in responding the welfare matters that were never be felt since the country’s independence and the frontier area matters with the neighboring countries”. (Pra-Peneliti dengan Yusuf SK : 2012), Authority disharmony of the Region Redistricting Moratorium towards the Act and the valid region redistricting law regulations impacts the regions which plan to do the region redistricting and is an obstacle for the public’s aspiration in establishing the New Autonomy Region, especially in frontier and inland areas.

Frontier and inland areas have actually got the central government’s attention in welfare matters, as can be seen in several regulations which have been organized like Peraturan Presiden Nomor 39 Tahun 2005 about Rencana Kerja Pemerintah Tahun 2006 (RKP 2006) which places the frontier area establishment as the main priority in reducing the inter-regional establishment disparity, with policy towards programs which are in the section C of Peraturan Presiden (Presidential Decree) No. 39, 2005 about Rencana Kerja Pemerintah Tahun 2006 (RKP 2006): development of disadvantaged areas, frontier, small and isolated islands. Area development to support basic right fulfillment and to reduce discrepancy is done through several main activities:

- (1) Infrastructure and facility establishment acceleration in disadvantaged areas, frontier, small and isolated islands through: (i) prioritizing Dana Alokasi Khusus (DAK) – Special Allocated Fund – for disadvantaged areas and frontier including the secluded custom society/community, especially those which are related to education, health, marine and fishery, irrigation, and transportation; and (ii) public service obligation skim implementation and pioneering for transportation and service obligation for telecommunication and rural electricity.
- (2) Regional economic development both in disadvantaged areas and country frontiers through: (i) access enhancement for farmers and micro and small entrepreneurs towards capital and market sources; (ii) entrepreneurship knowledge and skill enhancement for micro and small entrepreneurs; (iii) technical assistance aids for regional government, business doers, craftsmen, farmers, fishermen; (iv) economic empowerment for homesteader and coastal society especially women and fish cultivation empowerment; (v) empowerment and to increase the income of small-scale farmers; (vi) farming diversification to increase income; (vii) technical assistance aids of technology for regional government, society, and Unit Kegiatan Masyarakat (UKM) in the frontier areas; and (viii) empowerment of small islands in the frontier areas including infrastructure and facilities establishment for fishery and marine tourism development.
- (3) Security and traffic smoothness improvement towards people and goods in the frontier areas through: (i) Country and administrative borderline establishment; (ii) Facility provision improvement towards customs, immigration, quarantine, communication, information, and defense in the frontier areas.
- (4) Regional government’s institutional capacity improvement through: (i) participative planning facility which involves society and non-government organizations; and (ii) transparency, participation, and accountability of Perda composition facility. (Presidential Decree No. 39 : 2005)

Then, Presidential Decree No. 7, 2005 about Rencana Pembangunan Jangka Menengah Nasional (RPJM-Nasional 2004-2009) (Presidential Decree No. 7 : 2005) which has established the country’s aim and frontier area development as one of the national establishment priority programs and Laws No. 43, 2008 about Country’s Territory especially in Article 3 Country’s Territory Adjustment aim to:

- a. Guarantee the wholeness of the country’s territory, sovereignty, and orderliness in the Frontier Areas for the sake of the whole country’s welfare;
- b. Erect sovereignty and sovereign rights; and
- c. Maintain the management and arrangement of the country’s territory and frontier areas, including its borderline surveillance. (Laws No. 43 : 2008)

Peraturan Presiden (Presidential Decree) No. 12, 2010 about National Institution of Frontier Organizer presupposes the needs of the frontier to be handled intensively through an institution which is specially established by the Badan Nasional Pengelola Perbatasan (BNPP) – National Institution of Frontier Organizer. Special attention is focused on the frontier area management.

Specifically “for East Borneo province at the northern area which is a frontier and inland area, regional government has tried its best to maximalize the construction acceleration through the establishment of Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil which is abbreviated as BPKP2DT in Peraturan Daerah No. 13, 2009 about organization and another institution’s work procedures of East Borneo

province's regional equipments." (<http://www.bpkp2dtkaltim.com> : 2013) Currently, Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil (BPKP2DT) has been maximum in giving contribution towards the frontier area establishment. However, this institution only functions as an institution that manages the concept and composes frontier area establishment strategical plan, meanwhile its technical matters become the responsibility of the related Satuan Kerja Pemerintah Daerah (SKPD) – Regional Government Working Unit – so that in the construction implementation level, it will be difficult to be realized because the real implementation on the field is not handled directly by the Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil (BPKP2DT). This institution should have been given frontier establishment authority, especially the one which is not accommodated in the institution/ministry's programs or technical institutions which specialize in frontier establishment. It means that the Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil (BPKP2DT)'s function is not only to act as a coordinator but also to perform the establishment by making programs and by having its own budget. It also means that the Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil (BPKP2DT) is the performer who can improve the society welfare.

However, is by getting the authority to have the autonomy to establish frontier and inland areas in secluded areas, all the establishment problems in the frontier and inland areas can be solved? The one which becomes a new problem is that the span of control and distance that will be taken by the team of Badan Pengelola Kawasan Perbatasan dan Pedalaman dan Daerah Terpencil (BPKP2DT) is very far.

Frontier and inland areas, moreover, are areas which are full of uniqueness because on one side, they become the foremost entrance gate and are the sovereign border of Indonesian Republic but on the other side, they are far from the government so that it can be said as citizens without country because from the welfare side, they are less touched by the government. Yet, the frontier and inland area problems are vulnerable towards the matters which are related to outer sovereignty like *illegal logging*, *trafficking*, *illegal fishing*, drug smuggling and neighboring country's annexation. It can be seen on the case of "Sipadan and Ligitan island annexation by Malaysia" (TIM-MKB, 2011 : 4) which was fought over since 1963 between Indonesia and Malaysia. Then in 1979, Malaysia had claimed Sipadan and Ligitan islands as its territory and the climax was "on Tuesday, December 17, 2002 when the International Court won Malaysia with 16 judges while Indonesia only had 1 judge so that Sipadan and Ligitan islands became Malaysia's legal territory". (PurwantoH. Wawan : 16)

The annexation problem above became a serious problem because it concerns about the country's sovereignty. The historical journey of frontier area cases becomes a separate polemic because the central and regional governments are far from the frontier areas, and the lack of personnels and facilities. The northern part of East Borneo which becomes the North Borneo Province candidate "is an area that borders directly with Malaysia, The Philippines, and Brunei Darussalam and it has a high political vulnerability, especially in its relation with frontier area annexation" (TIM-MKB, 2011 : 55).

Therefore, one of the correct solutions to reduce the government's span of control and the optimalization of public service and society welfare is Region Redistricting in the frontier areas by a more active central government authority in giving trust towards regional government so that it becomes more efficient and effective according to the management principals of Good Governance in achieving the public welfare and the Indonesian Republic's wholeness.

Welfare in the frontier and inland areas is not only an economic welfare but also a social welfare (social welfare to show the service range to fulfill the society's needs, especially in the northern part of East Borneo Province because the service range is too far to be reached from the province's capital city). Thus, the best thing to do is the establishment of a new autonomy in the form of a province, namely North Borneo Province. The welfare of all of the Indonesian Republic citizens including citizens in the frontier and inland areas becomes the constitution's obligation.

North Borneo's area specification is on a frontier and inland area so that in its implementation, the law construction's arrangement uses welfare and security approaches in the perspective of the country's sovereignty so that a new economic growth centre is created so that it encourages the welfare distribution in frontier and inland areas. The North Borneo Province establishment which is a new autonomy region establishment has to have an initial step according to PP No 78 Tahun 2007 about Procedures of Region Establishment, Abolishment, and Merger, and it has to be based on the aspiration of most society which is followed up by studies which include quantitative valuation towards technical factors to value the worthiness of the new autonomy region establishment objectively. The requirements issued in PP No 78 Tahun 2007 about Procedures of Region Establishment, Abolishment, and Merger are administrative, technical, and physical requirements which must be

fulfilled by the founders of North Borneo province, which are people in 5 (five) towns/cities in East Borneo province which border directly with Sabah-Malaysia. Those five towns/cities are Bulungan, Tarakan, Nunukan, Malinau, and Tana Tidung. The long journey of North Borneo Province establishment was started 12 years ago on June 13, 2000 “since the student communication forum of North Borneo (including Berau Town) throughout Java and Celebes in Malang and the aspiration of North Borneo establishment, up to the establishment of Team MKB (Masyarakat Kalimantan Utara Bersatu) on November 22, 2009, prepared documents based on PP 29/2000” (TIM-MKB, 2011 : 10). Then, the documents were replaced by new documents based on PP 78/2007 about Procedures of Region Establishment, Abolishment, and Merger. Finally, it produced a significant result that the society of the northern part of East Borneo which would become the North Borneo Province must be grateful of because through the plenary session of DPR RI on October 25, 2012, North Borneo Province became the 34<sup>th</sup> province in Indonesian Republic because it had fulfilled the requirements issued in PP 78/2007 about Procedures of Region Establishment, Abolishment, and Merger so that Laws No. 20, 2012 was born and it became the first legal step of the North Borneo Province establishment. However, the fact is that there are still problems which cover the establishment of North Borneo Province

Substantially, Laws No. 20, 2012 about the establishment of North Borneo province needs to be studied more because there are a row of duties which are still far from the welfare purpose towards the society in frontier and inland areas. From the juridical problems, it can be seen that there was a law void (vacuum) at the aspect of welfare service giver, in which the government apparatus was not complete at the beginning of the North Borneo Province’s establishment because there was not DPRD.

Inside Laws No. 32, 2004 about Regional Autonomy Article 19 verse 2 is: “The establishment of regional government is regional government and DPRD” (Undang-Undang Otonomi Daerah No. 32 : 2004), while inside Law No. 20, 2012 about North Borneo Province Establishment Article 13 is: “Dewan Perwakilan Rakyat Daerah of North Borneo Province is established through the result of 2014 national election” (Undang-Undang No. 20 : 2012).

Therefore, prior to 2014, governor’s performance was not supervised by legislative institutions so that it causes an authority vacuum condition because there are executive institutions but there are not legislative institutions. If this is not anticipated, it will cause arbitrariness. Based on the above juridical problem, a law issue can be brought up: How to Understand the Law Politics which becomes the basis of Laws No. 20, 2012 about the Establishment of North Borneo Province?

## **2. Law Politics of North Borneo Province Establishment Act.**

### **2.1 Definition of Political Science and Jurisprudence.**

“Law politics” is as not simple as making definition about “law” or “law system”. It means that it is rather difficult to be formulated in a series that can give a whole definition about what is being defined, even if the term “law politics” must be associated with the term used frequently in English: is “law politics” a translation of *legal policy* or a translation of *politics of law*? However, a writing which tries to be arranged based on scientific thought could use a self-made concept definition”. (Moh. Mahfud MD, 1999 : 29-30)

“In this relationship, it is necessary to take notes that there are many definitions of a word especially about politics and law so that there are people who question its usage. However, there are other people who say that definitions are still useful. According to a political science expert William A Welsh, a definition is *arbitrary statements of how person wishes to look at a given term and at the phenomenon to which it refers*. Therefore, according to him, a definition cannot be said as wrong or right; the important ones is that there is usage. There is a more useful definition than the others.” (A.S.S Tambunan, 2002 : 1)

“Law and politics, each of them is seen as a separate system. However, in a broader view, law and politics are subsystems in a country’s system. Between law and politics there is a close relation; it can be said as *two faces of a coin*. On one time, politics has the main role in determining the law material which is valid in a country, according to the political view and considerations at the time when the law is made. On the other time, law has the role to regulate the life of the political society: those who are in the political suprastructure and infrastructure, and political mechanism”. (Janedjri M. Gaffar, 2013 : 47) Law Politics consists of two words: politics and law. Between these two words there is a close relation although they have different definition. To understand more about the relation of those two words, first it is necessary to find out the meaning of the word politics and then law.” (A.S.S Tambunan, 2002 : 1)



The first one is Politics. Etimologically, the word politics was derived from the Greek word *polis* which might mean city or city state. Other words were then derived from the word *polis*, such as “*polites*” (citizens) and “*politicos*”, an adjective which means citizenship (civic), “*politike techne*” for political skillfulness and “*politike episteme*” for political science. Then, the Romans took over those Greek sayings and named the knowledge about state (government) as “*ars politica*” which means skillfulness (kunts) about the state’s problems”. (F. Isjwara, 1966 : 21) The word politics is often said but is very difficult to be totally understood, even it can bring endless definitions as mentioned above that the origin of the word politics was city state (*polis*), which later developed into words and definitions in other languages, like the English words *polity*, *politic*, *political*, *politician*, *police* and *policy*. The concept of politics is a political science which has been studied “since the ancient Greek era around 500 to 300 years BC. However, there hasn’t been any political science limitation which is accepted universally. The experts of political science formulate their own limitations so that there are a various number of definitions.” (The Liang Gie : 7)

Those politic definitions can be explained as follows:

a. Prof. Wilbur White:

Political science: “The study of the formation, forms and process of the states and government”. (The Liang Gie : 8)

b. Prof. Mr. Dr. J. Barents:

“Political science is a science which studies the state’s subsistence. Political science is given the assignments to investigate the state in the same manner as the state does its assignments.” (The Liang Gie : 7)

c. Plato and Aristotle

Plato and Aristotle’s opinions are very classical:

They view politics as an effort to pursue public interest realization. They view politics as an association which does activities related to the matters which influence the whole society. Those two philosophers differentiate general matters (which influence or are related to the common society) from private or individual matters (which are only related to a small group of society). Briefly, the general matters are activities which have more moral than the private matters. According to Aristotle, human is a political creature and it has been the human’s substance to live in *polis* (city state in Greece). Only inside the *polis* itself the human will be able to obtain the highest morality because the matters which are related to the whole society will be discussed and debated, and only inside the *polis* itself the steps to realize the public interest and goodness will be taken. Outside the *polis*, human is perceived as a lower level creature than human, like animals, or as a higher level creature than human, like Gods.” (Surbakti Ramlan, 1984 : 1-2)

d. Maurice Duverger:

“Polical in its usual connotation is a concept dealing with the state.” (A.S.S Tambunan, 2002 : 2)

e. Karl Lowenstein :

Politic is nothing else but the struggle for power.” (Surbakti Ramlan, 1984 : 1-2)

f. Robert A. Dahl :

What is politics? This innocent question is rather like asking a biologist, “what is life?” Biology, it is said, is the science of life or living matter. It turns out that this question is extremely difficult to answer and that biologists do not exactly agree on the answer. Yet they are quite confident that some kinds of matter – one celled animals, for example – are clearly at the center of biology, while others – a piece of granite, for example – are clearly outside the field. And so are in political science. We pretty well agree on the kinds of things that are definitely political. Thus the governments of the United States, the Soviet Union, and any other nation, province, state, city, town, or colony are unquestionably political and therefore in the domain of political science. The government of an ant colony is not; at any rate I have not noticed any of my colleagues writing about party politics of imperialism in ant colonies. Yet if we can say with confidence what lies at the center of politics, we are, like the biologist confronted with the question of life, not so sure of the exact boundaries. Let me therefore describe what is at the center. To begin, wherever we find politics, most authorities agree, we necessarily encounter human beings living together in some kinds of association. Thus the opening words of Aristotle’s great book the politics: “Observation shows us first that every *polis* or state is a species of association.” Wherever we find politics we encounter some special relationships among the human being living together, a relationship variously called “rule”, “authority”, or “power”. (Kantaprawira Rusadi, 1983 : 10-11)

By noticing various possibilities of political attention target and centre which are formulated by scholars, the political concept based on the word origin is city state. Then, a political limitation can be formulated as: "Political science is a group of regular knowledge which discusses symptoms in society life with the focus on human's struggle in searching for power to achieve what is being desired." (The Liang Gie : 30)

Meanwhile about Law, "almost all of the law experts who define law give different definitions. This, at least for some parts, can be explained through many aspects, forms, and the law's greatness. Law has many aspects and is so broad that it becomes impossible for people to unite it in just one formula satisfactorily." (L.J. Van Apeldoorn, 2008 : 1) However, it can be defined generally that law is a set of rules about human's behavior in society life, which is what is appropriate and not appropriate to be done in his life. In every moment, our life is controlled by law. Law interferes human's affairs before he was born and it still interferes even after he is dead. Law protects fetus in a mother's womb and it still protects the corpse of dead people. It gives someone the rights towards his parents right after he was born and it puts the responsibility on the parents towards their children. Since he was born, human becomes a right supporter. Everything around us becomes the object of the rights. The unlimited law bond connects every human with his surrounding physical world. Human's social life occurs from the unlimited relationship between humans, direct relationship from origins, consanguinity, marriage, residence, nationality, trade, and various service giving (leasing, transportation, storage (*bewaargeving*), insurance money loan, etc).

All those relations are controlled by law; everything is law relation (*rechtsbetrekkingen*). If we think, it can be felt that law is unlimited but is everywhere. (L.J. Van Apeldoorn, 2008 : 6) "Law is a regulation (order) as a system of rules about human behavior. Therefore, law does not refer to a single rule but to a set of rules which has a unity so that it can be understood as a system." (Asshiddiqie Jimly and Safa'at Ali, 2012 : 13)

Here are some experts' opinions towards law:

a. Satjipto Raharjo:

"Law is a social institution whose aim is to establish justice in society. As a social institution then the establishment is adjusted towards the capacity level of the society itself. Law does not work under measurement and self-considerations but it works by thinking and considering what is good to be done for the society." (A.S.S Tambunan, 2002 : 6)

b. Prof Purnadi Purbacaraka:

"Basically, law has at least 9 (nine) definitions which will appear as:

1. Law as science
2. Law as rule
3. Law as law system
4. Law as ruler or officer (of law)
5. Law as ruler's decision
6. Law as steady or regular attitude
7. Law as interwoven values
8. Law as discipline or teaching system
9. Law as governmental process

Due to the facts above, according to Prof. Purnadi Purbacaraka, S.H., law cannot be defined. The definition of law should include those nine definitions so that this will make the definition too broad which will obscure the definition of the law itself. But for every meaning of law above, its definition can be made." (Halim Ridwan, 1983 : 41)

c. W. Friedman:

"Law is linked on one end with philosophy and on the other end with political ideology." (A.S.S Tambunan, 2002 : 5)

## 2.2 Concept of Law Political Theory

From the definitions of Political Science and Jurisprudence, it can be understood that the concept of law political theory comes from two disciplines due to the political science's nature in which its application is always

related to other disciplines. The study of political science does not focus on certain fields. Political science could give an image and it can be understood well towards the investigated material. There is a very legitimated factor that political science and jurisprudence are a strong combination which becomes one concept as Law Political Theory.

The above explanations state that the definition of the word politics is city state (polis), from Greek which later developed into words and definitions in various languages, like the English words *polity*, *politic*, *political*, *politician*, *police* and *policy*. This has clear correlations towards law because:

"Law cannot be left by state, regardless that city state formerly developed into the form of states outside the city state. This is caused because first, law must be applied on a state society. Second, it is because law is created by society and ruler of the state. Law cannot also be left from human because law is human's work that wants a norm to organize its people's life to be more in order, peace, and justice." (Sundari and Endang Sumiarni, 2010 : 1)

From the origin of the word politics which comes from Greek, we also can reflect it back to the historical track when human started to think about an ideal law. The development of those thoughts were formerly started in Greece in the sixth century B.C. Throughout the history of law, from ancient Greek to the twentieth century, there were several thoughts about law, which came from law philosophers, which were enforced ideally, which appeared in various forms of law genres (Sundari and Endang Sumiarni, 2010 : 1) so that from the historical track, the word politics and law history came from the same place, which was Greece, so that it becomes possible that politics and law always have dynamic relations in their development. Moreover, if we analyse the definition of law proposed by W. Friedman above that: Law is linked on one end with philosophy and on the other end with political ideology, it can be understood that law product is the result of harmonious dialogical struggle from philosophy and politic elements so that it becomes a grand work namely Law Product which is useful to organize the society. As proposed by Mahfud who defines Law Politics as "how the law will be and should be made and be determined its directions in national politics and how the law is functioned" (Moh. Mahfud MD, 1999 : 30)

. Law politics is, exists by creation, what the purpose of its creation is and where it is going. Law politics is government's policy about which law that will be kept, which law that will be replaced, which law that will be revised and which law that will be erased. As the time goes by, some experts try to define the law politics itself. Besides Mahfud M's opinion, there is Satjipto Rahardjo's opinion which expresses law politics as a choosing activity and the means which is going to be used to achieve social and law purpose in the society. (<http://www.refrensimakalah.com/2012/10/pengertian-dan-tujuan-politik-hukum.html>. : 2012) Meanwhile according to Padmo Wahjono in his book *Indonesia Negara Berdasarkan Hukum (Indonesia, a Country Based on Law)*, he defines law politics as a basic policy which determines the direction, form, and content of the formed law. (<http://www.refrensimakalah.com/2012/10/pengertian-dan-tujuan-politik-hukum.html>. : 2012) From the experts' opinion about Law Politics, it can be concluded that law politics in every country is different and is local and particular which is only valid from and for certain countries. This happens due to the welfare background, socio-cultural and political will of each government.

Nevertheless, the law politics of a country still notices the international law politics and reality. The law politic difference of a certain country with another country evokes the term national law politics. Constitutionally, UUD 1945 has asserted that Indonesia is a country based on law (Rechtsstaat), not merely by power (machtsstat). The fourth change in 2002 formulates assertively in Article 1 verse (3) (The Constitution 1945) "Indonesia is a Law State". This means that every power in the state should be based on law. Law State basically requires every action or deed of the government organizer to have obvious law basis or legality both by written and non-written laws.

"Theoretically, the aim of Law State is to uphold the law system that guarantees the law and protection assurance towards its people's rights, and to give public welfare. This theory takes the essence that law is supreme and is an obligation for the government organizer who obeys the law. There is no power above the Law." (Bagir Manan, 2006 : 9-10) "This law power began from the law's purpose (rechtsidee) in Pembukaan UUD 1945." (A.S.S Tambunan, 2002 : 97)

"Basically, the law's purposes are values where law principles are adapted which then become a law norm which organizes the country's life. However, it cannot be denied that law is a politic product so that characteristics of every law product are determined by power balance or political configuration which bears it. This assumption is chosen based on the reality that every political decision product and law can be seen as political crystalization and thought which interacts each other around politicians." (Moh. Mahfud MD, 1999 : 4)



“In the circle of law experts, there are minimum two arguments about causality relationship between politics and law. The idealists who are at the das sollen corner say that law has to be able to control and manipulate the society’s development, including their political life. Writer like Roscoe Pound had long spoken about “law as a tool of social engineering”. Some of the desires are fair if there is an effort to put law as the direction determinant of the society’s journey because by doing so, the law’s function to guarantee orderliness and to protect public interest will be more relevant. However, realist like Savigny says that “law always develops according to its society’s development”. This means that law, willingly or not, becomes an *independent variable* towards its outer condition, especially its political condition. Indeed in the reality, law is born as a reflection from political configuration which becomes its background. In other words, sentences inside the rule of law are crystallization of the competing political wills.”

Understanding the Law Politics of the establishment of Undang-Undang Provinsi Kalimantan Utara – The Law of North Borneo Province, in this study’s concept is focused on the polemic which organizes the election of DPRD members in North Borneo province because of what is stated in Laws No. 32, 2004 about Regional Autonomy Article 19 verse 2: “The establishment of regional government is regional government and DPRD” and what is stated in Laws No. 20, 2012 about the Establishment of North Borneo Province Article 13: “Dewan Perwakilan Rakyat Daerah of North Borneo Province is established through the result of 2014 national election”, so that prior to 2014, governor’s performance was not supervised by DPRD. Whereas, governance rule in Indonesia hints that Dewan Perwakilan Rakyat Daerah (DPRD) is the heart of governance in establishing the regional government. Normatively, the requirements can be seen in the Chapter 1 of Ketentuan Umum Article 1 verse (4) UU Pemerintah Daerah.

In line with the statement above, Jazim Hamidi in his book *Dekonstruksi Hukum Pengawasan Pemerintahan Daerah (The Turning Point of Local Autonomy)* says that: “One of the main functions of Dewan Perwakilan Rakyat Daerah which is abbreviated as DPRD in Indonesia is doing monitoring/surveillance. DPRD as an institution to represent its people has an important role in regional governance. DPRD members, through political parties, represent the society so that they have to have a big role in working on the democracy and realizing good and efficient governance in their region.” (Jazim Hamidi, 2011 : 99) “DPRD is a political institution and also the heart of governance. DPRD’s capacity in instituting *good governance* becomes the success determinant for the other governance to practice the same value.” (Jazim Hamidi, 2011 : 99)

Going from the explanation above, it can be understood that the existence of Dewan Perwakilan Rakyat Daerah (DPRD) is an absolute thing in establishing a province so that what was conceptualized in Undang-Undang Pembentukan Provinsi Kalimantan Utara legally is far from the expectation. A long transition period, unimmediate governor election and DPRD establishment make what was conceptualized as Pembentukan Provinsi Kalimantan Utara (Kaltara) at the central theme of North Borneo province establishment laws become Persiapan Provinsi Kalimantan Utara.

### 3. Conclusion

The concept which is in Laws No. 20, 2012 Article 19 about the existence of DPRD members has to wait for the 2014 national election to be able to be perceived by looking at law in the study as a political product so that it is not just understood from the imperative articles or norms, but it also needs to be seen from the study of its political background. The conceptual background of law politics is in and becomes the basic consideration of a new autonomy region establishment in frontier and inland areas. The observed conceptual background seems very simple but from the discussion of the desire of North Borneo establishment, we can see the law politic concept which underlies the ontology establishment of North Borneo and the epistemology and axiology from the philosophy reflection which are presented at the beginning of North Borneo Establishment in the form of law product. The analysis knife used in this law theory understands more philosophically to reconsider as a form of careful and clear thinking attitude towards government’s act in establishing North Borneo province, whether or not the axiology is right on target for the North Borneo people’s prosperity in its global benefit. The Law Political Theory in this analysis is as if someone is busy running, we are asked to stop for a moment and ask again, “Have we done the right thing?” so that it becomes in line with the law political theory defined by Mahfud who defines Law Politics as “how the law will be and should be made and be determined its directions in national politics and how the law is functioned”. Law politics is, exists by creation, what the purpose of its creation is and where it is going. Meanwhile, Purnadi Purbacaraka and Soerjono Soekanto assertively state that Law Politics is an activity of choosing and applying values. As for Hans Kelsen, he formulates: “State as the incarnation of national law rule, where the state can be seen from the law it creates” (Padmo Wahyono and Friends, 1989 :17) so that Law Construction adjustment in every aspect including regional autonomy

establishment in frontier and inland areas which is issued by the political product including Article 19 has been a norm which is specially applied and it still has to root in a set of normative point of departure in the form of Law State's basic principles.

Therefore, in line with the assumptions above, the authority which has been given to the regional government in the frontier and inland areas by the central government has to fit the purposes mentioned in Pembukaan UUD 1945 as fundamental requirements for the human existence in frontier and inland areas which are humanly dignified with the assurance which has been or has to be formulated in the Law Construction adjustment of new autonomy region in that area, in which the making process of Undang-Undang is adjusted towards the direction and plan which are designed in the establishment of North Borneo Province as a new autonomy region.

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